



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 24 2012

Joseph N. Gothie, Treasurer
Committee to Elect Sean Summers
100 E. Market Street
York, PA 17401

RE: MUR 6550

Dear Mr. Gothie:

On April 11, 2012, the Federal Election Commission notified Committee to Elect Sean Summers and you in your official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 10, 2012, based upon the information contained in the complaint, and information provided by the Committee and you in your official capacity as treasurer, the Commission decided to dismiss the complaint and closed its file in this matter. Accordingly, the Commission closed its file in this matter on October 10, 2012.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the Factual and Legal Analysis is enclosed for your information.

If you have any questions, please contact Frankie D. Hampton, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Anthony Herman
General Counsel

BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

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FACTUAL AND LEGAL ANALYSIS

CELA
MUR 6550

RESPONDENTS: Committee to Elect Sean Summers
Joseph N. Gothie as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed by John MacDonald alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by the Committee to Elect Sean Summers and Joseph N. Gothie in his official capacity as treasurer (the "Committee"). It was scored as a low-rated matter under the Enforcement Priority System, a system by which the Federal Election Commission ("Commission") uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In this matter, the Complainant asserts that the Committee was responsible for distributing flyers that allegedly failed to provide any disclaimer information, as required by the Act and Commission regulations, citing 11 C.F.R. § 110.11(a). Compl. at 1-2. Specifically, according to the Complainant, the flyers should have included a clear and conspicuous statement stating that the Committee had paid for them. *Id.* at 1. Such statements should have been of sufficient type size to be clearly readable, set apart from the remainder of the flyers in a printed box, and printed with a reasonable degree of color contrast between the background and the printed disclaimer. *Id.*

Attached to the Complaint as Exhibit A is a copy of the flyer at issue, which consists of one double-sided page. On the right-hand side, under the heading "What People Are Saying," are expressions of support for Summers's candidacy from eleven individuals, six on the front

1 side of the page and five on the back. Compl., Ex. A at 1-2. On the left-hand side of the flyer's
2 front page is a color headshot of Summers under which the caption "Supporters" appears,
3 followed by a list of approximately 20 individuals. *Id.* at 1. Most of the left-hand side of the
4 back of the page is blank, except for the bottom, where what appear to be yard signs are depicted
5 in color. The first sign, which is the only one facing the reader, includes the following slogan:
6 "A lender. Not a politician. Summers for Congress." *Id.* at 2.

7 Treasurer Gothie, responding on behalf of the Committee, acknowledges that the flyers at
8 issue had been prepared and distributed by the Summers campaign and that, although the
9 omission of the required disclosure language "was inadvertent . . . it did occur." Resp. at 1. As
10 a mitigating factor, Gothie explains that "the flyer was not a 'hit piece' designed to disparage
11 other candidates . . . distributed by anonymous means." *Id.* Instead, he states that the flyers
12 were distributed by Summers's campaign volunteers who were simultaneously distributing other
13 campaign information "which contained the required disclosure language." *Id.* Pointing out that
14 the Complainant was apparently not misled as to the fact that the Summers campaign had
15 distributed the flyers, Gothie also notes that the election at issue was both his and candidate
16 Summers's "first federal election" and while both were aware of the disclaimer requirement, they
17 did not catch the omission "during the proofing process." *Id.*

18 Finally, Gothie states that he reviewed the Committee's invoices and determined that the
19 cost of producing "100 of the flyers in question" was \$82.15. *Id.* at 2. Attached to the Response
20 is a copy of the invoice identified by Gothie, from Printing Express, for 100 flyers entitled "What
21 People are saying." Resp., Attach. 1. The cost of the flyers is listed as \$77.50, plus \$4.65 tax,

1 for a total of \$82.15. *Id.* The Committee's 12-Day Pre-Primary Report, filed on April 12, 2012,
2 discloses an \$82.15 disbursement to "Printing Express Inc." for "flyer duplication."

3 On September 4, 2012, the Committee filed a Miscellaneous Report with the Commission
4 requesting permission to terminate, and explaining that the Committee's only debts are loans
5 owed to Summers. The request to terminate includes a letter from Summers discharging the
6 Committee of its loan obligations to him above the Committee's cash on hand of \$1,066.38.

7 **B. Legal Analysis**

8 In assessing the potential magnitude of the activity at issue, the Commission noted that
9 the distribution of the flyers was not widespread (only 100 were disseminated) and the cost to
10 produce them (\$82.15) was *de minimis*. Moreover, the general public was unlikely to have been
11 misled as to who paid for the flyers given the circumstances here. Therefore, in furtherance of
12 its priorities, the Commission exercised its prosecutorial discretion and dismissed this matter
13 pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

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